

in opinion

NEW HAMPSHIRE LAW LIBRARY

March 27, 1958

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CONCORD, N.H.

Mrs. Mildred P. McKay
State Librarian
Concord, New Hampshire

Dear Mrs. McKay:

Some days ago you handed me a proposed contract designed to establish the Library Film Cooperative of Northern New England, such Cooperative to be composed of the Audio-Visual Center of the University of New Hampshire and cooperating public and state libraries of Maine, New Hampshire and Vermont.

You asked the views of this office with respect both to the technical features of the proposed agreement and to the legality of your agency's entering upon such a plan. In view of our opinion concerning the latter point, it will be unnecessary to discuss the technical features set forth in the proposal.

The plan calls for the creation of the Cooperative as an unincorporated association. The rights and liabilities of the several members are based upon contract. That is to say, the relationship of each member to the other members is based upon contractual terms. Each member first binds itself to be in the association (and this is not changed by the fact that there is a means provided whereby a member may withdraw), and to make certain payments into the designated fund. Contract terms control the use of the films among the members of the Cooperative. In addition, the Cooperative would have ownership rights in the films purchased.

It is a well established principle of law that public officials have by implication the authority to make contracts necessary to the performance of their statutory duties. This principle is, of course, subject to the proposition that such power will not be implied if the matter is covered by express statutory provision. It is further subject to the well established rule that in the absence of statute expressly authorizing it, a public official may not bind his agency in a contractual relationship with another State or agency thereof. It is this rule which, we believe, governs in the present case.

March 27, 1958

We have carefully examined the statutes of New Hampshire and find no provision conferring upon your Commission the requisite statutory authority to make such an agreement as here is contemplated.

The proposed contract is returned herewith.

Very truly yours,

Warren E. Waters
Deputy Attorney General

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Encl.